

AT JAIPUR BENCH

JUDGMENT

Jawahar Singh & Another Vs. Central Bureau of Narcotics
(S.B. CRIMINAL APPEAL NO.1652/2002)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 14-11-2002 in Sessions Case No.74/2001 passed by Sh. M.K.Jain, RHJS, Sessions Judge Tonk (Special Judge, (NDPS Cases)).

Date of Judgment: February 06, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Biri Singh Sinsinwar] for the appellant.
Mr. Kamendra Sihag]

Mr. Kamlakar Sharma, Standing Counsel for respondent.

BY THE COURT:

Jawahar Singh and Balwan Singh, the appellants herein, along with Narayan were put to trial in Sessions Case No.74/2001 before Sessions Judge Tonk (Special Judge, NDPS Cases) who vide judgment dated November 14, 2001 convicted the appellants under section 8/18 NDPS Act and sentenced them to undergo ten years rigorous imprisonment and fine of Rs.1 lac, in default one year rigorous imprisonment.

Narayan was however stood acquitted of the said charge.

2. On June 17, 2001 at 15 hours team of the Narcotic Bureau intercepted a white Maruti bearing No.EL8CC/ 4473 at Bajri Naka Jaipur Chauraha Deoli District Tonk wherein the Driver and one person were travelling. They disclosed their names as Jawahar Singh and Balwan Singh.

With their consent the car was searched and on opening the ply of the door of the car polythene bags were found containing 13 Kg. opium. Samples from each bags of 24 Gms were taken and sealed. The statements of appellants got recorded and they were arrested. On completion of all formalities of investigation charge sheet was filed. In due course the case came up for trial before the learned Sessions Judge Tonk (Special Judge, NDPS Cases). Charge under section 8/18 NDPS Act was framed against the appellants, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 8 witnesses and got exhibited 20 documents. In the explanation under Sec.313 CrPC, the appellants claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. The first contention of learned counsel for the appellants is that independent witnesses Narendra Singh (Pw.1) and Devendra Singh (Pw.2), who were associated with the raid party did not support the prosecution case. Thus search and seizure of the opium in the manner stated by the prosecution has become doubtful and possibility of planting cannot be ruled out. It is further contended that Rakesh Kumar (Pw.3), Manak Chand (Pw.4), Mohan Lal (Pw.5), Satyapal Singh Sabarwal (Pw.6) and Prakash Chand Meena (Pw.7) were the members of raid party and their testimony could not have been relied upon. These contentions in my opinion are devoid of merit.

4. In G. Srinivas Goud Vs. State of AP, (2005)8 SCC 183, their Lordships of Supreme Court indicated thus:-

“It should be kept in view that this was a raid which was conducted by excise officials and not by the police. The panchnama is signed by the two independent witnesses, the three officers of the Department and the two accused. It contains a clear description of how the search was made and the contraband was seized. It is a case of recovery of 20 kg of diazepam which is a banned drug as per the Schedule to the NDPS Act. When the quantity recovered is so large, it does not appear to be a case of planting. Further a perusal of the panchnama leaves no scope for doubting the seizure. So far as association of independent witnesses is concerned it will be seen that the time of search was 5.30 am in the morning. At that hour it is difficult to get people from the general public to act as independent witnesses. Still the officer managed to get two witnesses, one of whom has been examined. PW.5 is a reserve policeman to act as a mediator/ panch witness.”

In the instant case 13 kg opium got recovered from the car wherein the appellants were found sitting, therefore it does not appear a case of planting. I see no reason to disbelieve the statements of Rakesh Kumar, Manak Chand, Mohan Lal, Satyapal Singh and Prakash Chand Meena merely on the ground that they were the officials of Narcotic Department, since from their testimony it could not be established that they had enmity with the appellants.

5. It is next contended by learned counsel for the appellants that provisions contained in section 57 of the NDPS Act have not been complied with. I do not find any substance in this contention also. Satyapal Singh Sabarwal (Pw.6) in his deposition stated that after complying with the legal procedure he reached to the office at 9 pm and submitted FIR (Ex.P-11) to Rakesh Kumar (Pw.3) Superintendent of Narcotics department. Testimony of Satyapal Singh gets corroboration from the statements of Rakesh Kumar.

6. I also notice that prior to their arrest, the statements of the appellants got recorded under section 67 of the NDPS Act by Aizaz Ahmad (Pw.8), wherein both the appellants accepted that they had in their possession 13 kgs of opium. From the chemical analysis report (Ex.P-18) the four samples sent for chemical examination had contained opium within the meaning of NDPS Act.

7. For these reasons, I do not find any merit in the instant appeal and the same stands accordingly dismissed. The conviction and sentence of the appellants under section 8/18 NDPS Act are confirmed.

(Shiv Kumar Sharma)J.

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